



7020-02

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1171]

Certain Child Resistant Closures with Slider Devices Having a User Actuated Insertable Torpedo for Selectively Opening the Closures and Slider Devices Therefor

Commission Determination to Review in Part an Initial Determination Granting Complainant's Motion for Summary Determination of a Violation of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on April 21, 2020, the presiding administrative law judge (“ALJ”) issued an initial determination (“ID”) in the above-captioned investigation, granting summary determination on violation of section 337 that included a recommended determination on remedy and bonding. On April 22, 2020, the ALJ issued a Notice of Errata thereto. The Commission has determined to review the ID in part. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3179. Copies of non-confidential documents filed in connection

with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 21, 2019, the Commission instituted this investigation based on a complaint filed by Reynolds Presto Products Inc. ("Presto"). 84 *Fed. Reg.* 43616-17 (Aug. 21, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337") based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain child resistant closures with slider devices having a user actuated insertable torpedo for selectively opening the closures and slider devices therefor by reason of infringement of certain claims of U.S. Patent Nos. 9,505,531 ("the '531 patent"); 9,554,628; and 10,273,058 ("the '058 patent") (collectively, the "Asserted Patents"). *Id.* at 43616. The complaint further alleges that a domestic industry exists. *Id.* The Commission's notice of investigation names six respondents: Dalian Takebishi Packing Industry Co., Ltd. of Dalian, China ("Dalian Takebishi"); Dalian Altma Industry Co., Ltd. of Dalian, Liaoning, China ("Dalian Altma") (together, the "Dalian Respondents"); Japan Takebishi Co., Ltd., of Tokyo, Japan; Takebishi Co., Ltd., of Shiga, Japan; Shanghai Takebishi Packing Material Co., Ltd., of Shanghai, China; and Qingdao Takebishi Packing Industry Co., Ltd., of Qingdao, China. *Id.* at 43616-17. It also names the Office of Unfair Import Investigations ("OUII") as a party. *Id.* at 43617.

On October 7, 2019, the ALJ issued an ID finding the Dalian Respondents in default. Order No. 7 (Oct. 30, 2019), *unreviewed by* Comm’n Notice (Nov. 26, 2019). On November 19, 2019, the ALJ issued an ID terminating the investigation based on Presto’s withdrawal of the complaint as to the other four respondents (Japan Takebishi Co., Ltd.; Takebishi Co., Ltd.; Shanghai Takebishi Packing Material Co., Ltd.; and Qingdao Takebishi Packing Industry Co., Ltd.). Order No. 10 (Nov. 19, 2019), *unreviewed by* Comm’n Notice (Dec. 18, 2019). That ID also terminated the investigation as to (i) claims 6 and 7 of the ’531 patent and (ii) claims 6 and 7 of the ’058 patent. *Id.*

On November 15, 2019, Presto filed a motion for summary determination that the domestic industry requirement was satisfied and that a violation had been established. Presto’s motion requested immediate entry of a limited exclusion order against the Dalian Respondents, a general exclusion order (“GEO”), and a 100 percent bond. On November 26, 2019, OUII filed a response to the motion supporting the summary determination motion and the requested GEO and 100 percent bond.

On April 21, 2020, the ALJ issued the subject ID granting summary determination of violation of section 337 by the Dalian Respondents. The ID also contains the ALJ’s recommendation on remedy and bonding, in which the ALJ recommends issuance of a GEO or, in the alternative, a limited exclusion order directed to each of the Dalian Respondents, and that a 100 percent bond be set for importation during the Presidential review period.

On May 1, 2020, OUII filed a petition seeking review of portions of the ID’s analysis of the economic prong of the domestic industry requirement. No other party petitioned for review of the ID, and no party filed a response to OUII’s petition.

The Commission has determined to review the ID in part with respect to the ID's analysis of the economic prong of the domestic industry requirement. The Commission has determined not to review the remaining findings in the ID. The Commission is not requesting any briefing on the issue under review.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) one or more cease and desist orders ("CDOs") that could result in the Dalian Respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994). In addition, if a party seeks issuance of any CDOs, the written submissions should address that request in the context of recent Commission opinions, including those in *Certain Arrowheads with Deploying Blades and Components Thereof and Packaging Therefor*, Inv. No. 337-TA-977, Comm'n Op. (Apr. 28, 2017) and *Certain Electric Skin Care Devices, Brushes and Chargers Therefor, and Kits Containing the Same*, Inv. No. 337-TA-959, Comm'n Op. (Feb. 13, 2017). The written submissions should respond to the following:

1. Is Presto still seeking CDOs against the Dalian Respondents?

2. If Presto is still seeking CDOs, please address the following questions:
- a. Can the Commission grant CDOs if a complainant has not argued for them in its remedy briefing before the ALJ? Has the Commission ever granted CDOs under such circumstances?
 - b. What prejudice have the Dalian Respondents suffered as a result of Presto seeking CDOs in its complaint but not requesting them before the ALJ?
 - c. Please identify with citations to the record any information regarding commercially significant inventory in the United States as to each respondent against whom a CDO is sought. If Presto also relies on other significant domestic operations that could undercut the remedy provided by an exclusion order, identify with citations to the record such information as to each respondent against whom a CDO is sought.
 - d. In relation to the infringing products, please identify any information in the record, including allegations in the pleadings, that addresses the existence of any domestic inventory, any domestic operations, or any sales-related activity directed at the United States for each respondent against whom a CDO is sought.
 - e. Please discuss any other basis upon which the Commission could enter a CDO.

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or CDO would have on: (1) the public health and welfare; (2)

competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005. 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to this investigation, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In its initial written submission, Presto is also requested to submit proposed remedial orders for the Commission's consideration. Presto is further requested to identify the date the Asserted Patents expire, to provide the HTSUS subheadings under which the subject articles are imported, and to supply identification information for all known importers of the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on **June 12, 2020**. Reply submissions must be filed no later than the close

of business on **June 19, 2020**. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 *Fed. Reg.* 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1171) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract

personnel^[1], solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission vote for these determinations took place on June 5, 2020.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 5, 2020.

Lisa Barton,
Secretary to the Commission.

^[1] All contract personnel will sign appropriate nondisclosure agreements.

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